

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
APPELLATE DIVISION**

MYRON CHATERAM,)
)
Appellant,) **D.C. Crim. App. No. 1999-031**
)
v.)
) **Re: Terr. Ct. Crim. No. F91/1996**
GOVERNMENT OF THE VIRGIN ISLANDS,)
)
Appellee.)
)
)
)

On Appeal from the Territorial Court of the Virgin Islands

Considered: August 9, 2000

Filed: October 25, 2000

BEFORE: **RAYMOND L. FINCH**, Chief Judge of the District Court of the Virgin Islands; **THOMAS K. MOORE**, Judge of the District Court of the Virgin Islands; and **EDGAR D. ROSS**, Judge of the Territorial Court of the Virgin Islands, Division of St. Croix, Sitting by Designation.

ATTORNEYS:

W. John Amerling, Esq.
St. Thomas, U.S.V.I.
Attorney for Appellant,

Maureen Phelan Cormier, Esq.,
Assistant Attorney General
St. Thomas, U.S.V.I.
Attorney for Appellee.

OPINION OF THE COURT

PER CURIAM.

Appellant Myron Chateram ["Chateram"], now 22, appeals the Territorial Court's decision to transfer his case for prosecution as an adult. We have jurisdiction over this timely appeal under V.I. CODE ANN. tit. 4, § 33¹ and the collateral order exception to the final judgment rule. *See Government of the Virgin Islands ex rel. A.A.*, 34 V.I. 158, 166-67, 931 F. Supp. 1247, 1252 (D.V.I. App. Div. 1996) (appellate jurisdiction over mandatory transfer orders founded upon collateral order doctrine), *aff'd*, 106 F.3d 385 (3d Cir. 1996). We must remand this matter due to a jurisdictional defect in the proceedings below.

I. FACTUAL AND LEGAL BACKGROUND

Appellant Chateram was sixteen years old when he was charged in July, 1994, with acts of delinquency related to the armed robbery of the Ashvind Jewelry Store ["the store"] that same month. Had Chateram been an adult, the acts charged would have constituted robbery in the first degree, possession of an unlicensed firearm during the commission of a crime of violence, and unauthorized use of a vehicle. Based on the firearm allegation, the government, in February, 1995, moved to transfer

¹ See V.I. CODE ANN. tit. 4, § 33 (1997 & Supp. 2000); Section 23A of the Revised Organic Act of 1954.

Chateram to the Criminal Division under the mandatory transfer provision of 5 V.I.C. § 2508(b)(4).² (See J.A. at 11-12; Mot. Transfer.) On March 15th, the Family Division granted the government's motion and denied Chateram's request for a hearing and redetermination of probable cause. (See J.A. at 15-17; Transfer Order.)

On June 11, 1996, we issued our ruling in *Government of the Virgin Islands ex. rel. A.A., supra*, that a hearing and redetermination of probable cause is required before effecting a mandatory transfer under 5 V.I.C. § 2508(b)(4). On September 3, 1996, the government dismissed the firearm charge, which was the original basis for the transfer.³ (See J.A. at 24-25; Amended Information.) On January 5, 1998, the Territorial Court, responding to Chateram's motion to dismiss and remand, determined that Chateram, nineteen at the time, was too old to remand to the Family Court, and therefore the Criminal Division

² At the time of the alleged offenses, Chateram was not legally subject to mandatory transfer for the alleged offenses because he had no history of delinquency. See 1994 V.I. Sess. Laws 55-56 (Act No. 5973); 5 V.I.C. § 2508(b)(1-3) (1994). Since that time, the Legislature has expanded the scope of the statute to provide for the mandatory transfer of children with no history of delinquency who commit certain violent offenses at the age of fourteen or older. See 5 V.I.C. § 2508(b)(4).

³ In its motion to amend the information, the government moved to amend Count I by charging second degree robbery instead of first degree robbery, Count II by dismissing the firearm charge and substituting in its place a charge of possession of stolen property, and Count III by charging possession of stolen property (a Suzuki Jeep) in place of charging unauthorized use of a vehicle.

would make a *de novo* transfer determination. (See J.A. 103-06.)

The Criminal Division held a *de novo* hearing on April 8th, at which the government resurrected the information charging the firearm offense as the basis for mandatory transfer under 5 V.I.C. § 2508(b)(4). (See J.A. at 209-11; Tr. Transfer Hr'g, Apr. 8, 1998.) On September 12, 1998, the Territorial Court issued its order finding probable cause and granting the transfer of Chateram to the Criminal Division. (See J.A. at 110-16.)

II. DISCUSSION

Despite the long delays no doubt engendered by the confusing nature of the transfer provisions, we are constrained to observe that the Criminal Division of the Territorial Court had no jurisdiction under Virgin Islands law to transfer Chateram to the adult Criminal Division. As we note in our companion opinion, *Melvin Belleau v. Government of the Virgin Islands*, D.C. Crim. App. No. 1998-155 slip op. at 6-7 (D.V.I. App. Div. Oct. 5, 2000):

Title 4, section 172 of the Virgin Islands Code provides that "the Family Division of the Territorial Court shall have original jurisdiction [c]oncerning any adult . . . alleged to have committed or to have attempted to commit a delinquent act within the territory prior to having become eighteen years of age." 4 V.I.C. § 172(c). It is well-established that the time of the alleged offense, not the time of the information or indictment, determines whether a

particular person is within the jurisdiction of the Family Division. See *Government of the Virgin Islands v. Parrilla*, 13 V.I. 409, 412-13, 416 (Terr. Ct. 1977).

[T]he Family Division maintains exclusive jurisdiction over the transfer of individuals for adult prosecution, and determines whether other divisions have "competent jurisdiction." See 5 V.I.C. § 2508(f); see also *id.* § 2508(a), (b), (e) (referring in each instance to the Family Division).

Following these precepts, the Criminal Division of the Territorial Court was without jurisdiction to initiate a transfer hearing, to hear and weigh evidence, and to enter its findings and accept [defendant] for prosecution as an adult. We must remand this matter to the Family Division for a *de novo* transfer hearing.

Id. (footnote omitted). Because the application of 4 V.I.C. § 172 to this case is identical to its application in *Belleau*, we reach the identical result and remand to the Family Division for a *de novo* transfer hearing.⁴

ENTERED this 25th day of October, 2000.

⁴ We note that section 173(a), which states "[w]hen jurisdiction shall have been obtained by the Family Division in the case of any child, such jurisdiction may be retained by the Division until he becomes 19 years of age," does not apply to Chateram's situation, because the jurisdiction of the Family Division is no longer premised on "the case of a child", but rather on the case of an "adult . . . alleged to have committed . . . a delinquent act . . . prior to having become eighteen years of age" under section 172(c). Chateram reached the age of majority after the matter had been initially transferred to the adult Criminal Division. Thereafter, the jurisdiction of the Family Court could only be premised upon section 172(c), which rendered irrelevant section 173(a).

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ATTEST:
ORINN ARNOLD
Clerk of the Court

By: _____/s/_____
Deputy Clerk

NOT FOR PUBLICATION

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Maureen Phelan Cormier, Esq.,
Assistant Attorney General
St. Thomas, U.S.V.I.
Attorney for Appellee.

ORDER OF THE COURT

PER CURIAM.

AND NOW, this 25th day of October, 2000, having carefully considered the parties' submissions, and for the reasons set forth in the accompanying Opinion of even date, it is hereby

ORDERED that this matter is **REMANDED** to the Family Division of the Territorial Court for further proceedings consistent with this opinion. It is further

ORDERED that the mandate of the Appellate Division shall issue with the docketing of this Order.

ATTEST:
ORINN ARNOLD
Clerk of the Court

By: _____/s/_____
Deputy Clerk

Copies to:

Judges of the Appellate Panel
Honorable Geoffrey W. Barnard
Honorable Jeffrey L. Resnick
Judges of the Territorial
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